

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF RIAN J. WREN

associated degradation in quality and increased costs. So far as I am aware, no other local exchange carrier has attempted to impose a similar requirement with such consequences.

38. SWBT's "design services" requirement policy will discourage customers from migrating to alternative suppliers. The local and interLATA carriers have devised a process for customer changes of long-distance providers that is inexpensive, quick and does not itself cause degradation of service. For the Act to achieve its purposes, customer changes in local service providers must be as simple and inexpensive and as non-service-affecting as they are now for long distance. SWBT, however, has made a customer's change to a carrier offering UNE local service as difficult, expensive and service-degrading as possible.

D. Requiring Proof Of Vendor Consent

39. SWBT has created another barrier to entry through its licensing requirements. SWBT's Oklahoma SGAT provides, in Section XV.A.6, that "[i]t is the sole obligation of LSP to obtain any consents, authorizations, or licenses under intellectual property or proprietary rights held by third parties that may be necessary for its use of SWBT network facilities under this Agreement." Tellingly, SWBT never raised this issue in the past when it provided its customers with access to various network elements; the issue arose only after SWBT was required to make UNEs available to competitors.

40. As explained in detail in the Affidavit of Thomas Pelto, the licensing requirement creates a very substantial barrier to entry. SWBT has identified approximately

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80 agreements, involving 39 separate vendors, which it contends may require CLECS to obtain a license or right-to-use. If a CLEC is unable to obtain a license or right-to-use from the appropriate vendor, it will be barred from access to the network element. Even assuming that a CLEC would ultimately obtain all necessary license and right to use agreements, the time and expense required would be substantial. Further, a CLEC would be subject to "hold-ups" by vendors who were aware of the importance of the network element to the CLEC's business plans. The reality is that CLECs have no purchasing or bargaining power with SWBT's vendors which is remotely comparable to SWBT's, and therefore are not in a position to obtain such license or right-to-use agreements on reasonable terms that would enable them to compete effectively. If SWBT has procured or accepted restrictions with its vendors that prevent it from providing nondiscriminatory access to UNEs, then SWBT should obtain appropriate amendments to vendor agreements that remove those impediments.

41. In short, a requirement that new entrants negotiate and obtain license or right-to-use agreements with dozens of third parties would erect a powerful barrier to entry and nullify the statutory right to obtain network elements on nondiscriminatory terms.

E. Denying Important Sources Of UNE Revenue Authorized By The Act

1. SWBT's Position That IntraLATA Toll Revenues Are Not Available Via UNE

42. As the Commission has held, when a CLEC purchases a network element, it obtains the right "to provide all features, functions, and capabilities" of that element. (Implementation of the Local Competition Provisions in the Telecommunications

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Act of 1996, CC Docket No. 96-98, Order on Reconsideration, FCC 96-394 (rel. Sept. 27, 1996) at ¶ 11; see also Local Competition Order, ¶ 262; 47 C.F.R. § 51.307(c)). Indeed, the CLEC is obligated to "provide an end user all of the services that the end user requests." (Order on Reconsideration at ¶ 12). The CLEC pays the full cost of the element (on a per customer basis in the case of shared facilities), in return for the right to receive all of the revenues that can be generated from use of the element to serve the customer. (Local Competition Order, ¶¶ 334, 363 n. 772). The Commission's Rules explicitly forbid an ILEC from imposing conditions, restrictions or limitations that would impair the ability of the requesting carrier to offer a service in a manner that the requesting carrier intends. 47 C.F.R. 51.309.

43. In its negotiations with AT&T, however, SWBT is taking the position that AT&T may not use UNEs to provide intraLATA toll service to its customers until SWBT receives authority to provide in-region interLATA services. This is plainly contrary to the requirements of Section 251(c)(3) of the Act and the Commission's Rules, and would completely negate the statutory scheme whereby the CLEC pays the cost of the element, in return for the right (and duty) to provide all services requested by the customer and the right to receive all revenues.

44. SWBT's position has significant business implications. As explained in the Affidavit of Steven Turner, given the excessive interim prices set for UNEs by SWBT, prohibiting AT&T from using UNEs to provide intraLATA toll service will eliminate any

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potential margin that AT&T could earn for most residential customers. Thus, SWBT's position on intraLATA toll revenue creates another serious barrier to entry using UNEs.

2. SWBT's Position That It Is Entitled To Interstate And Intrastate Access Revenues

45. SWBT's position that it is entitled to all intrastate and interstate access revenues on calls terminating on AT&T unbundled switches and loop elements is incorrect for the same reasons as its position on intraLATA toll revenues. Indeed, the Commission already has clearly rejected SWBT's position. In explaining that competing interLATA carriers are permitted to provide any telecommunications service using UNEs, the Commission used as an example precisely the one here: "When new entrants purchase access to unbundled network elements to provide exchange access services, whether or not they are also offering toll services through such elements, the new entrants may assess exchange access charges to IXC's originating or terminating toll calls on those elements." Local Competition Order, ¶ 363 n.772.

46. In the face of this statement, it could not be more clear that SWBT's stance on interstate and intrastate access is a contrived and wholly unjustified attempt to erect yet another barrier to competition using the platform. The more potential sources of revenue from the platform that SWBT can deny to AT&T, the higher the barrier to UNE-based competition.

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F. Non-Cost Based Prices For UNEs

47. The Affidavit of Daniel P. Rhinehart shows that SWBT's prices for UNEs are not the forward-looking, cost based rates required by the Act. The OCC has not found the rates to be just and reasonable. Rather, they are interim rates proposed by SWBT that are to remain in effect until the OCC completes a permanent cost proceeding.

48. SWBT's interim rates for UNEs are a major barrier to the development of competition in Oklahoma. Mr. Turner's Affidavit shows that the margins for residential services, even if AT&T were to receive the intraLATA toll revenues that SWBT insists upon retaining, are almost always negative.

49. Further, the fact that SWBT's rates for UNEs are interim rates subject to a later "true-up" creates uncertainties and risks that are a further barrier to the development of competition in Oklahoma.¹⁵ Such rates create uncertainties and risks beyond those normally faced by a new entrant because the new entrant does not know with any certainty important elements of its costs, and hence what rates and charges to assess to recover the substantial investment required to provide competitive local exchange services.

50. Finally, SWBT has supported legislation -- in Oklahoma and in other Southwest Region states¹⁶ -- that SWBT could attempt to use to protect itself against

¹⁵ Arbitrator's Report at 19; aff'd in relevant part, OCC Order.

¹⁶A copy of the Oklahoma House bill supported by SWBT is Attachment 16 to this affidavit. The bill is now in conference committee in the Oklahoma legislature, pending efforts to reconcile it with the corresponding Oklahoma Senate bill, which is Attachment 17 to this Affidavit.

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revenue losses from UNE and other forms of competition permitted by new federal pro-competition policies. In Arkansas, the legislation goes even further and would permit UNE prices, in SWBT's view, to be based on historical, embedded costs rather than on forward-looking costs, as the Act requires.¹⁷ And in Texas, SWBT supported the passage of HB 2128,¹⁸ which has build-out requirements¹⁹ and anti-resale provisions²⁰ that have been used by SWBT to stall AT&T's entry into local exchange competition even though Texas is the one state in which AT&T has been able to conclude an interconnection agreement with SWBT.

¹⁷A copy of the Arkansas legislation is Attachment 18 to this affidavit.

¹⁸Relevant portions of HB 2128 are Attachment 19 to this affidavit.

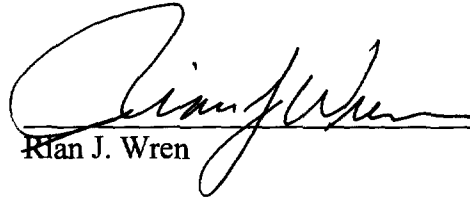
¹⁹Section 3.2531(c), for example, would require a CLEC to build-out facilities to serve at least 60% of its service area over a six year period, an essentially impossible task.

²⁰Section 3.2532, for example, would prohibit AT&T, MCI, and Sprint from entering the local exchange market in Texas as pure resellers.

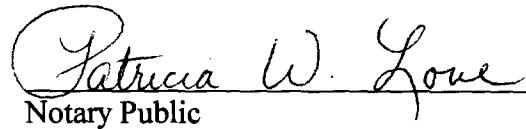
FCC DOCKET CC NO. 97-121
AFFIDAVIT OF RIAN J. WREN

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on April 24, 1997.


Rian J. Wren

SUBSCRIBED AND SWORN TO BEFORE ME this 24 day of April 1997.


Notary Public

My Commission Expires:

7-8-2000

ATTACHMENT 1

SWB ARBITRATION

VOLUME NO. 13 - OCTOBER 8, 1996

COMPRESSED TRANSCRIPT

PUCT DOCKET NO. 16226

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE
PUBLIC UTILITY COMMISSION OF TEXAS
AUSTIN, TEXAS

PETITION OF AT&T COMMUNICATIONS
OF THE SOUTHWEST, INC. FOR
COMPULSORY ARBITRATION TO
ESTABLISH AN INTERCONNECTION
AGREEMENT BETWEEN AT&T AND
SOUTHWESTERN BELL TELEPHONE
COMPANY

DOCKET NO.
16226

PETITION OF MCI TELECOMMUNICA-
TION CORPORATION AND ITS
AFFILIATE MCI METRO ACCESS
TRANSMISSION SERVICES, INC. FOR
ARBITRATION AND REQUEST FOR
MEDIATION UNDER THE FEDERAL
TELECOMMUNICATIONS ACT OF 1996

DOCKET NO.
16285

PETITION OF TELEPORT
COMMUNICATIONS GROUP, INC. FOR
ARBITRATION TO ESTABLISH AN
INTERCONNECTION AGREEMENT
BETWEEN TELEPORT COMMUNICATIONS
GROUP, INC. AND SOUTHWESTERN
BELL TELEPHONE COMPANY

DOCKET NO.
16196

PETITION OF MPS COMMUNICATIONS
COMPANY, INC. FOR ARBITRATION
OF PRICING OF UNBUNDLED LOOPS
AGREEMENT BETWEEN MPS
COMMUNICATIONS COMPANY, INC.,
AND SOUTHWESTERN BELL TELEPHONE
COMPANY

DOCKET NO.
16189

HEARING ON THE MERITS

VOLUME 13 Page 4307 - 4509

PROCEEDINGS
TUESDAY, OCTOBER 8, 1996

(Whereupon, documents
were marked
"AT&T-15A, 60, 60A,
69B and 73" for

identification.)

(Whereupon, a document
was marked "SWB-63A"

for identification.)

9 SWB 63 and 63 amount. Thank you very
10 much.

11 JUDGE HAMILTON: Let's go
12 ahead and take up a few housekeeping
13 matters. Just so you-all know how we're
14 going to handle this morning, what I would
15 like to do first is to take oral arguments
16 as soon as the Commissioners arrive. And
17 after oral argument this morning, there is
18 a number of things that we need to take
19 up. We'd like to go back and revisit the
20 operation and technical revised DPL.

21 We need to make sure that we
22 have got all the issues on that DPL and in
23 addition any stipulations that we need to
24 talk about with respect to that.

25 We also would like to talk

PETITION OF AMERICAN
COMMUNICATIONS SERVICES, INC.,
AND ITS LOCAL SUBSIDIARIES FOR
ARBITRATION WITH SOUTHWESTERN
BELL TELEPHONE COMPANY PURSUANT
TO THE TELECOMMUNICATIONS ACT
OF 1996

DOCKET NO.
16290

APPLICATION OF AT&T
COMMUNICATIONS OF THE
SOUTHWEST, INC. FOR COMPULSORY
ARBITRATION TO ESTABLISH AN
INTERCONNECTION AGREEMENT
BETWEEN AT&T AND GTE SOUTHWEST,
INC./CONTEL OF TEXAS, INC.

DOCKET NO.
16300

PETITION OF MCI
TELECOMMUNICATIONS CORPORATION
AND ITS AFFILIATES, INCLUDING
MCI METRO ACCESS TRANSMISSION
SERVICES, INC., FOR ARBITRATION
AND MEDIATION UNDER THE FEDERAL
TELECOMMUNICATIONS ACT OF 1996
OF UNRESOLVED INTERCONNECTION
ISSUES WITH GTE SOUTHWEST, INC.

DOCKET NO.
16355

HEARING ON THE MERITS

BE IT REMEMBERED THAT at 9:05
a.m., on Tuesday, the 8th day of October
1996, the above-entitled matter came on for
continued hearing at the Offices of the
Public Utility Commission of Texas, Travis
Building, 1701 North Congress Avenue,
Commissioners' Hearing Room, Austin, Texas
78757; before CHAIRMAN PATRICK HENRY WOOD
III and COMMISSIONERS JUDY WALSH and ROBERT
W. GEE, with KATHLEEN HAMILTON,
Administrative Law Judge, presiding; and
the following proceedings were reported by
William C. Beardmore, a Certified Shorthand
Reporter of:

1 briefly about -- we would like to visit
2 with MCI a little bit about if there are
3 any issues in the mediation that you-all
4 haven't been able to resolve there that we
5 need to bring into the arbitration.

6 MR. HERRERA: After the
7 oral argument?

8 JUDGE HAMILTON: After oral
9 argument -- right -- just a discussion on
10 that. We also will take -- at the very
11 end we'll go ahead and enter into the
12 record any additional stipulations that
13 the parties may have reached over the
14 break and in addition to any exhibits that
15 need to be entered into the record that
16 have not already been entered.

17 And then lastly also we want to
18 talk about -- I think AT&T and
19 Southwestern Bell made a filing yesterday
20 on contract-related legal issues and we
21 want to have a brief discussion on that.
22 And then I can give you a little bit more
23 information on the briefs on costing and
24 pricing. So that's the way we see this
25 morning.

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1 I'll get ahold of that one. Thank you.
2 Does Southwestern Bell's -- I think it was
3 in the costing and the broader policy
4 issues which was one of the reasons I
5 think (inaudible) to this directly, does
6 Southwestern Bell want facilities-based
7 competitors? I mean, if you had to have
8 competitors at all, would you rather have
9 a facilities-based competitor or not.
10 MR. KRIDNER: I think that
11 the Federal Act recognizes both
12 facilities-based and resale and, yes, I
13 think that Southwestern Bell does welcome
14 facility-based competition.
15 CHAIRMAN WOOD: I mean --
16 MR. KRIDNER: Now,
17 well . . .
18 CHAIRMAN WOOD: And
19 wouldn't you rather get, say, 75 cents on
20 the dollar than zero cents on the dollar?
21 I mean, a facilities-based competitor
22 would go and not provide any revenue
23 streams to Southwestern Bell, whereas a
24 resale would provide at least some.
25 MS. HUNT: Yeah, but TELRIC

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1 already only gives us 75 cents on the
2 dollar because we are not recovering our
3 embedded cost and we ought to be able to
4 recover at least the correct cost that
5 competition would set and that's what
6 TELRIC is supposed to be.
7 CHAIRMAN WOOD: Let's
8 assume that that -- I mean, I'm just
9 thinking more broadly than that. I
10 understand your argument on embedded
11 versus TELRIC, but, you know, if somebody
12 is buying piecemeal from the system or is
13 reselling the service all together; in
14 other words, taking Options 1 and 2 from
15 the Federal Act as compared to the Time
16 Warner type who really ain't going to use
17 much of the system at all, just
18 interconnect one and do that. I mean,
19 what kind of competitor is the competitor
20 that you-all would rather have?
21 MS. HUNT: I think the
22 honest answer has to be we would rather,
23 first of all, have reseller competitors
24 and next have competitors who at least
25 take the whole loop up to the switch.

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1 Switching is a commodity that can be
2 reused for other customers to the extent
3 that they take 1 plug out of a loop. You
4 have isolated the remainder of that loop
5 and nobody gets any benefit from that, not
6 competitors, not consumers, not
7 Southwestern Bell. So, yes, if you could
8 pick and choose, the Company would be
9 better off to at least recover some return
10 on its network so long as that return is
11 high enough that you're making some money
12 and there is the incentive to continue to
13 keep that network at a high level of
14 efficiency for benefit of consumers,
15 competitors who wish to rely on that
16 network, and our own telephone service.
17 But if you drive those costs too
18 low, Southwestern Bell at the corporate
19 level has a lot of businesses and the
20 incentive to continue to put more money
21 into the Texas telephone network is not
22 going to be all that great nor is there
23 going to be any incentive for competition
24 to come in and drive up the service and
25 the technology quotient higher; whereas,

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1 if you set it -- even if you set it a
2 little bit too high, if you err a little
3 bit on the side of setting it too high
4 what will happen is competition will rush
5 in. The Time Warners of the world will
6 decide maybe they will sell loops after
7 all if there is enough profit to be made
8 and competition itself will drive our
9 rates lower.
10 MR. COSGROVE: But as Mr.
11 Kridner indicated, Mr. Chairman, I mean,
12 part of the Federal Act as you know for us
13 to get into interLATA in region involves
14 facilities-based competition or at least a
15 facilities-based competitor, I should say,
16 as far as the 271 application. So to that
17 degree, of course we want to see a proper
18 balancing or incentive such that there's
19 some facilities-based competition. It
20 gives customers a true choice. We
21 recognize that. We were a proponent of
22 that position during PURA 95 and House
23 Bill 2128. So there has to be a proper
24 balance of facilities-based competition.
25 We don't want to be sitting here a few

ATTACHMENT 2

04/14/97 10:42

11'97 15:22 FR CRTR-BLAS-PYN-NSTCS - 14 235 2609 TO 82.

Attachment 2 5

704

Stephen M. Carter
Vice President-General Manager
Special Markets

Southwestern Bell Telephone
One Bell Center
Suite 4110
St. Louis, Missouri 63101
Phone 314 255-2400



April 11, 1997

Mr. Rian Wren
AT&T
Vice President SW States - LSO
5501 LBJ Freeway
Dallas, Texas 75240

Dear Rian:

This responds to your letter dated April 3, 1997, outlining concerns regarding the availability of unbundled network elements (UNEs) from Southwestern Bell (SWBT).

First and foremost, I want to emphasize that SWBT's corporate policy associated with unbundled network elements is, and has consistently been, parity. As we have memorialized in our Texas agreement and as we have offered in Oklahoma negotiations:

Each Network Element provided by SWBT to AT&T will meet applicable regulatory performance standards and *be at least equal in quality and performance* as that which SWBT provides to itself. (emphasis added)

In addition, SWBT is committed to complying fully with the requirements of the Federal Act and FCC rules which provide some clear guidelines for UNEs. In particular, UNEs must be offered in a nondiscriminatory manner to all requesting telecommunications carriers (Rules 51.307 (a) and 51.311 (a)). UNEs must also be offered separate from other UNEs and for a separate charge (Rule 51.307 (d)).

Your letter addresses two general areas relating to the use of UNEs: (1) issues related to when AT&T provides service which is based entirely on the use of SWBT-provided UNEs; and (2) SWBT's terms and conditions associated with its provision of UNEs.

With regard to your first general area, you have identified four specific concerns related to AT&T's intent to use UNEs to arbitrage resold services, i.e., to provide services entirely over SWBT-provided UNEs. Each of these specific concerns appears to stem from AT&T's impressions of internal processes that SWBT has necessarily implemented to meet its legal obligations related to UNEs. SWBT's internal processes are designed to serve all LSPs nondiscriminatorily and thus must similarly apply to all uses of UNEs including requests for individual elements as well as requests for combined multiple elements.

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April 11, 1997

Mr. Rian Wren

Your first concern relates to interruption of an end user's service when converting from a SWBT-provided basic local exchange service to service provided by AT&T based entirely on the use of SWBT-provided UNEs. Let me first assure you that SWBT's policy is never to cause unnecessary service interruptions whether involving retail services or UNEs. Unfortunately, serving arrangements or changes to serving arrangements, from time to time, do necessitate limited service interruption. Whenever such interruption is necessitated, I assure you it will be limited to the least amount of time possible, and certainly to the same degree as when SWBT customers must experience an interruption.

AT&T's second concern relates to the fact that SWBT operations support systems do not currently support Mechanized Loop Testing (MLT) of unbundled elements. You claim that "AT&T will lose the mechanized loop testing capabilities for POTS" when it decides to utilize UNEs to provide service. In reality, AT&T does not "lose" any UNE capabilities but it also of course does not obtain resold service capabilities when it orders UNEs. MLT was designed by AT&T prior to divestiture to test services based on inventory records for services. As such, MLT can only function properly when it has a complete inventory of the facilities used in providing a service. When AT&T purchases UNEs from SWBT, AT&T designs and inventories the components used by AT&T to provide service; SWBT's only obligation is to inventory the individual elements requested from SWBT by AT&T. However, SWBT is willing to consider a request from AT&T to develop this type of testing capability. If AT&T wishes to provide services exactly as SWBT does for its own retail customers (including testing by SWBT via MLT), AT&T has the option of using resale to serve its customers.

Your third concern appears to be an allegation that SWBT is subjecting AT&T to "additional unreasonable non-recurring cost for SMAS test point installation" (although you also include AT&T's end users, SWBT has never suggested that it has, nor does it have, any influence over what AT&T charges its end users). First, there is no charge for the cross connect from a SWBT-provided 2-wire analog loop to a SWBT-provided analog switch port. The rates that you refer to, \$41.07 for the loop and \$78.60 for the switch port, are close to the rates SWBT and AT&T have discussed in Oklahoma negotiations. The nonrecurring charges for a loop connected via a cross connect to a switch port do not include any costs associated with a SMAS test point. You may verify this fact with the numerous AT&T employees that have had frequent access to SWBT proprietary cost information through the cost workshops in the Texas Arbitration case and in other dockets.

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Mr. Rian Wren

Your fourth specific concern relates to electronic access to due dates for UNEs. SWBT is committed to providing AT&T and other LSPs unbundled network elements under nondiscriminatory terms as clearly required by the FCC (Rules 51.307 (a) and 51.311 (a)). Therefore, it is not appropriate to provide a different due date process for UNEs connected only to other SWBT UNEs than for UNEs connected or combined with an LSP's own facilities. You suggest incorrectly that SWBT has caused you to "lose the real-time capabilities" of Datagate for pre-ordering unbundled elements. This statement confuses the capabilities that SWBT has offered AT&T through Datagate for resale (i.e., electronic access to due dates) with the capabilities of Datagate associated with UNEs. Although it is true that Datagate will provide different capabilities regarding resold SWBT services as opposed to the purchase of SWBT UNEs, these differences, consistent with the different obligations for resale and UNE, certainly do not cause AT&T to "lose the real-time capabilities of Datagate." SWBT is providing exactly the same due date processes on UNEs to all LSPs, and the same due date processes on resold services to all LSPs.

The second general area addressed in your letter relates to the terms and conditions associated with SWBT's UNEs (which AT&T improperly characterizes as "restrictions"). SWBT views all of these matters as lawful terms and conditions associated with the provision of UNEs and does not agree with AT&T's characterization of these terms as "restrictions." You point to three such terms as supposed "restrictions": (1) SWBT's retention of intraLATA toll; (2) SWBT's right to access charges; and (3) SWBT's position that UNEs and tariffed services may not be combined.

In regard to intraLATA toll, I understand that it remains AT&T's position that, in a UNE environment, AT&T is entitled to use unbundled switching to circumvent the intraLATA toll dialing parity requirements of the Act (Section 271(e)(2)(B)). SWBT is entitled to retain intraLATA toll until it implements intraLATA toll dialing parity as a result of actual entry into the in-region, interLATA market or as otherwise provided by the Act. AT&T's position is neither consistent with the Act, nor with any of the arbitration decisions received to date in any of our states.

In regard to access charges, SWBT is entitled to continue to recover our access charges in conjunction with unbundled elements that we provide until access charges are modified by an effective order of the FCC. As you acknowledged, the Eighth Circuit has stayed the FCC's interim access structure. The effect of that stay combined with specific language in the FCC Interconnection Order is that, until the Court rules on the merits, the industry is back to the access regime that existed prior to the FCC's Order and the Court's stay. Nevertheless, as a

Page 4
April 11, 1997
Mr. Rlan Wren

compromise, SWBT has offered to forego the imposition of access charges for local switching, CCL and RIC to the EXC for interLATA calls over AT&T-purchased unbundled local switching in exchange for agreement that AT&T will pay an amount equal to the CCL and RIC in addition to the charges for unbundled elements.

Finally, with respect to tariffed services, there is no requirement in either the Act or the FCC rules that AT&T or any other LSP be allowed to combine UNEs with tariffed services and thus our position is certainly not a "restriction" on AT&T's use of or access to UNEs. Our companies have discussed specific circumstances where SWBT is willing to allow AT&T to use tariffed services in conjunction with UNEs, e.g., collocation. But the fact remains that SWBT is committed to provide UNEs in full compliance with the law (i.e., on a fully nondiscriminatory basis) and to provide services in compliance with our tariffs. In any event, SWBT's position does not restrict AT&T's ability to utilize UNEs to provide any telecommunications service, including originating and terminating toll calls from Unbundled Local Switching.

In closing, I hope this letter confirms that SWBT is offering AT&T access to and use of UNEs in full compliance with the Federal law and the FCC rules. None of our positions regarding our provision of UNEs requires AT&T or any other LSP to provide services using SWBT UNEs that (1) experience unnecessary service interruption, (2) are less than equal to services provided to other LSPs including SWBT, or (3) are inconsistent with either the Act or the FCC's rules. SWBT offers AT&T and other LSPs UNEs without restriction, in the sense intended under the law, on nondiscriminatory terms and conditions including prices, which are based on cost consistent with the Act and state arbitration awards.

Sincerely,



ATTACHMENT 3

FILED

NOV 13 1996

BEFORE THE CORPORATION COMMISSION OF THE COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPLICATION OF AT&T COMMUNICATIONS) CAUSE NO. PUD 960000218
OF THE SOUTHWEST, INC., FOR COMPULSORY)
ARBITRATION OF UNRESOLVED ISSUES WITH)
SOUTHWESTERN BELL TELEPHONE COMPANY)
PURSUANT TO § 252(b) OF THE)
TELECOMMUNICATIONS ACT OF 1996) ORDER NO.

Attachment 3

HEARING: October 14, 15, 17, 22 and 31, 1996

APPEARANCES: O. Carey Epps, Jack P. Fite, Jay M. Galt, Margie
McCullough and Alistair Dawson, Attorneys
AT&T Communications of the Southwest, Inc.
Roger K. Toppins, Kendall Parrish, Curt Long and Michael
C. Cavell, Attorneys
Southwestern Bell Telephone Company
George M. Makohin, Attorney
American Communication Services of Tulsa, Inc.
Western Oklahoma Long Distance, Inc.
Mary Kathryn Kunc and Ron Comingdeer, Attorneys
Oklahoma Rural Telephone Coalition
Ronald E. Stakem and Stephen F. Morris, Attorneys
MCI Telecommunications Corporation
Nancy M. Thompson and Martha Jenkins, Attorneys
Sprint Communications Company, L.P.
David Jacobson, Attorney
Terral Telephone Company
Rick D. Chamberlain and Mickey Moon
Assistant Attorneys General
Office of the Attorney General, State of Oklahoma
John W. Gray, Senior Assistant General Counsel
Public Utility Division, Oklahoma Corporation
Commission

REPORT AND RECOMMENDATIONS OF THE ARBITRATOR

Introduction

On July 29, 1996, AT&T Communications of the Southwest, Inc. ("AT&T") filed an Application seeking arbitration of certain unresolved issues regarding an interconnection agreement between AT&T and Southwestern Bell Telephone Company ("SWBT"). The Application was brought pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 ("the federal Act") and OAC 165:55-17-7. In its application, AT&T requested this Commission to decide through arbitration specified disputed issues which negotiations between the parties had failed to resolve, and to approve contractual terms.

The federal Act seeks to promote local exchange telephone competition. It requires that an incumbent local exchange carrier ("ILEC") negotiate with a carrier ("competitive LEC") that seeks to interconnect with the ILEC or to purchase unbundled network elements or telecommunications services for resale from the ILEC. In the event those parties are not able to agree on all issues, Section 252(b) of the federal Act authorizes either party to request arbitration of the disputed issues before the state regulatory commission. This Commission has promulgated rules to facilitate local exchange competition. OAC 165:55-17-1 through 165:55-17-35.

The disputed issues which AT&T brought for resolution by arbitration were stated in its Application. AT&T included the following requests of this Commission: (1) to determine what telecommunications services SWBT should offer for resale; (2) to establish what discounted wholesale rates should apply for resale of services; (3) to determine what "unbundled" network elements should be provided; (4) to determine where interconnection is technically feasible; (5) to establish cost-based rates for interconnection; (6) to establish reciprocal compensation and meet point arrangements for transport and termination of traffic exchange between the respective carriers' networks; (7) to provide other essential facilities and services such as number portability, collocation and nondiscriminatory access to poles, ducts, conduits and rights-of-way; and (8) to provide dependable and flexible on-line electronic interfaces.

AT&T also requested the Arbitrator to adopt AT&T's proposed Interconnection Agreement (Appendix 9), with the rates, terms and conditions proposed by AT&T. If the Arbitrator declines to adopt any portion of AT&T's proposed Interconnection Agreement, AT&T requested it be directed to revise such portions as are necessary to comply with the Arbitrator's decision. SWBT also submitted

becomes a facility based provider, the amount for liquidated damages may need to be increased.

III. Unbundled Network Elements

AT&T and SWBT were unable to reach agreement on the specific elements of SWBT's network which should be provided to AT&T on an unbundled basis. In its application for arbitration, AT&T contended that SWBT should unbundle its network at all technically feasible points and that AT&T should be permitted to package such network elements in any combination. Specifically, AT&T requested the Commission to require SWBT to provide twelve unbundled network elements which included the network interface device, loop distribution, loop concentration/multiplexer, loop feeder, end office switching, operator systems, dedicated transport, common transport, tandem switching, signaling links, signal transfer points, and the service control point. In its response to AT&T's application, SWBT proposed to offer the network interface device, loop, cross connect port, switching and local transport as unbundled network elements. Therefore, AT&T requested the Commission to determine which network functions SWBT should be required to offer on an unbundled basis to AT&T.

Summary of AT&T testimony: AT&T witness James Jacobson set forth the Network Elements which the FCC ordered an incumbent LECs was to unbundle. This "minimum set" of unbundled network elements should be expanded to include the Loop Distribution, the Loop Concentrator/Multiplexer, Loop Feeder, and Dark Fiber.

According to Mr. Jacobson, dark fiber is fiber transmission media which has been deployed but which is not being utilized to provide service at the present time. It is fiber that does not have electronics on either end which is commonly referred to in the industry as "unlit" or "dark". The unbundling of dark fiber is technically feasible and does not raise any proprietary issues for the incumbent LECs.

Mr. Jacobson testified that new entrants will likely deploy Synchronous Optical Network (SONET) rings in given market areas to create facilities-based competition with the incumbent LEC. To facilitate new entrants building plans and promote a facilities-based offer in the marketplace, new entrants should have the ability to purchase dark fiber that the incumbent LECs have deployed.

Mr. Jacobson further testified that there should be further unbundling with respect to the LEC network interconnection device (NID). New entrants should be given the ability to utilize any spare terminals on an existing incumbent LEC NID to directly connect its loops. If no spare terminals would be available on the existing network interface device, new entrants should be permitted to install their own NID and move the customer's inside wire from the incumbent LEC NID to the newly installed device. This solution will solve the customer's concern when at the same time mitigating the incumbent ILECs expressed concerns about safety and will also reduce the number of cases where customer must be inconvenienced by multiple devices attached to their home.

AT&T witness Daniel C. Keating, III testified regarding subloop elements that should be unbundled. The three Subloop Network Elements linking the NID to the Local Switch that should be further unbundled are: (1) loop distribution plant and (2) the loop concentrator/multiplexer, and (3) loop feeder. Mr. Keating testified that the FCC has ordered the incumbent LECs to unbundle the NID and the loop as distinct network elements but has left to individual State Commissions the decision whether to unbundle any sub-loop elements.

Mr. Keating testified that unbundling of the loop distribution element will create flexibility for new entrants that have established feeder facilities from their local switches, but do not have local distribution facilities to the customer's premises. Such carriers can justify use of their fiber backbones to transport traffic between their switch and the incumbent LEC's loop distribution facilities, i.e., provide their own loop feeder fiber capabilities. In such cases, the new entrant could use the incumbent LEC's loop distribution plant, in conjunction with the LEC's loop concentrator/multiplexer (when one is present) to deliver traffic between the new entrant's backbone network (at the LSO) and an individual end user. This will speed the development of facilities-based solutions. According to Mr. Keating, the unbundling of the sub-loop is technically feasible and is documented in various existing industry publications. Mr. Keating testified that there is no technical reason why unbundling and interconnection of each of these elements cannot be accomplished and, according to the FCC Order, it is SWBT's burden to demonstrate the absence of technical feasibility to accommodate the requested unbundling. Considerations relating to space and provisioning are not "technically feasible" issues. FCC Order Paragraph No. 390.

Summary of SWBT testimony: William C. Deere testified regarding the network elements SWBT proposes to offer to AT&T on an unbundled basis. Mr. Deere expanded SWBT's original list of proposed unbundled network elements to include access to the network interface device, the local loop, the loop cross connect, local switching, interoffice transport (dedicated transport and common transport), tandem switching, signaling and call-related databases, access to operations support systems functions, and access to operator services and directory assistance. Mr. Deere also testified that unbundling the local loop into three sub-elements would increase the probability of network failures and be detrimental to quality of service. Further, sub-loop unbundling would increase the potential for workman-caused trouble in cable enclosures due to lack of security and could lead to a deterioration of customer service for all telecommunications customers. Finally, Mr. Deere testified that the provision of dark fiber would eliminate SWBT's ability to test and maintain that portion of its network.

Mr. Deere further testified that the Commission should permit AT&T to connect its NID to the SWBT NID on a single unit dwelling and one or two line business locations where the customer inside wiring is not easily accessible outside of the SWBT NID. For business and apartment locations where the customer's inside wiring is accessible outside of the SWBT NID, AT&T should provide its own NID and connect directly to the customer's inside wiring. For business and apartment locations where the customer's inside wiring is not accessible outside of the SWBT NID, SWBT would rearrange its NID to provide access to the inside wiring at AT&T's expense.

Findings and Recommendations: Based upon the testimony, the federal Act and applicable provisions of the FCC Order, the Arbitrator finds that SWBT should implement the seven FCC ordered Unbundled Elements, as set forth at paragraph 366 of the FCC Order: Network Interface Devices, Local Loops, Local Switching, Interoffice Transmission Facilities, Signaling and Call-Related Databases, Operations Support Systems, and Operator Services and Directory Assistance Facilities.

The Arbitrator further recommends that SWBT be ordered to provide access on an unbundled basis to: (1) SWBT's unbundled loop through loop distribution, loop concentrator/multiplexer and the loop feeder facilities whenever it is technically feasible, as may be determined at such time that AT&T becomes a facilities-based provider (if there is a disagreement as to what elements are technically feasible at that time, the parties may request a Commission determination of the issue); and (2) SWBT's "regulated" dark fiber.

Additional requested unbundled elements shall be made available when technically feasible and shall be provided upon terms and conditions that are reasonable, just and non-discriminatory. AT&T should be allowed to order and use unbundled network elements and any combination that it deems appropriate for the provision of service. Any mediation to SWBT's AIN database must be performed on a competitively neutral basis, applied equally to all database users including SWBT.

IV. Interconnection and Collocation Issues

A. Interconnection

In its application for arbitration, AT&T requested that SWBT be required to provide interconnection through two-way trunks with Feature Group D-type technical characteristics and full SS7 capabilities, to existing and future incumbent LEC end offices and the nearest SWBT access tandem within its service area. In addition, AT&T requested that SWBT be required to negotiate specific meet point arrangements for interconnection where each party would be responsible for the costs of constructing and maintaining facilities to the meet points. SWBT responded that two-way trunks would be feasible in the long term, but that one-way trunking would provide for higher network performance reliability in the initial start up phases. Further, SWBT agreed to negotiate mutually agreeable meet point arrangements between carriers.

Summary of AT&T testimony: AT&T witness, James Jacobson described interconnection as being the physical linking of two networks for the mutual exchange of traffic. According to Mr. Jacobson, both the federal Act and the FCC Order at paragraph 173 require the incumbent LEC to provide interconnection at all "technically feasible points" at the same quality that it provides to itself and on rates, terms and conditions that are "just reasonable and nondiscriminatory." The federal Act, § 252(c)(2). Mr. Jacobson testified that interconnection does not include the transport and termination of traffic and, therefore, should not be confused with reciprocal compensation arrangements.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF AT&T COMMUNICATIONS) CAUSE NO. PUD 960000218
OF THE SOUTHWEST, INC., FOR COMPULSORY)
ARBITRATION OF UNRESOLVED ISSUES WITH)
SOUTHWESTERN BELL TELEPHONE COMPANY)
PURSUANT TO § 252(b) OF THE)
TELECOMMUNICATIONS ACT OF 1996) ORDER NO. **407704**

HEARING: October 14, 15, 17, 22 and 31, 1996, before the
Arbitrator and December 2, 1996, before the
Commission en banc

APPEARANCES: O. Carey Epps, Jack P. Fite, Jay M. Galt, Margie
McCullough and Alistair Dawson, Attorneys for AT&T
Communications of the Southwest, Inc.;

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Michael C. Cavell, Attorneys for Southwestern Bell
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George M. Makohin, Attorney for American
Communication Services of Tulsa, Inc. and Western
Oklahoma Long Distance, Inc.;

Mary Kathryn Kunc and Ron Comingdeer, Attorneys for
the Oklahoma Rural Telephone Coalition;

Ronald E. Stakem and Stephen F. Morris, Attorneys
for MCI Telecommunications Corporation;

Nancy M. Thompson and Martha Jenkins, Attorneys for
Sprint Communications Company, L.P.;

David Jacobson, Attorney for Terral Telephone
Company;

Rick D. Chamberlain and Mickey Moon, Assistant
Attorneys General, Office of the Attorney General,
State of Oklahoma;

John W. Gray, Senior Assistant General Counsel,
Public Utility Division, Oklahoma Corporation
Commission.

ORDER REGARDING UNRESOLVED ISSUES

BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma
("Commission") being regularly in session and the undersigned
Commissioners being present and participating, there comes on
before the Commission for consideration and action the appeals to
the Report and Recommendations of the Arbitrator filed by AT&T
Communications of the Southwest ("AT&T"), Southwestern Bell
Telephone Company ("SWBT"), and the Oklahoma Rural Telephone
Coalition; the statements of positions filed by the Commission
Staff, and MCI; and the motion of SWBT to exclude the appeal of the
Oklahoma Rural Telephone Coalition and statements of position of
MCI.

that implicit in the Arbitrator's recommendation on collocation is that safety and security considerations should be taken into account.

Unbundling:

The Commission finds that the Arbitrator's recommendation on unbundling should be adopted by the Commission, however, the Commission finds based on the arguments presented by the parties on appeal, further clarification is necessary. The Commission finds that there should not be any restrictions placed on what unbundled elements may be purchased and reconfigured.

INTERIM NUMBER PORTABILITY

The Commission finds the Arbitrator's recommendation on interim number portability should be adopted by the Commission, however, the Commission finds that the term "telecommunications service provider" needs to be clarified. In OAC 165:55, the Commission defined telecommunications service provider as, "all authorized providers of local exchange service, whether an incumbent local exchange company or a competitive local exchange company". However, in the Federal Communications Commission ("FCC") Docket No. CC 96-98, telecommunications service provider is defined much broader to include not only local exchange companies, but to include interexchange carriers as well as others. Therefore, the Commission finds that the broader FCC definition of telecommunications service provider should be adopted.

MISCELLANEOUS:

Additionally, since the findings in this order are based upon only a portion of the interconnection agreement, the Commission finds that the Commission may modify any position taken in this order, upon its review of the full interconnection agreement, after notice and hearing. The Commission finds that this section is not intended to allow the parties to relitigate any issue decided in the arbitration.

Further, the Commission finds that the findings in this arbitration should not have any effect on any common carrier except for SWBT and AT&T.

ORDER

IT IS THEREFORE THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that SWBT's motion to strike the appeal of the Oklahoma Rural Telephone Coalition and the statement of position of MCI is hereby denied.

IT IS FURTHER THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that the Report and Recommendation of the Arbitrator is hereby expressly adopted by the Commission except for the issues specifically addressed in the Commission's findings above.

IT IS FURTHER THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION

PUC DOCKET NOS. 16189, 16196, 16226, 16285, and 16290

PUBLIC UTILITY COMMISSION OF TEXAS

FTA96 §252 ARBITRATION PANEL

DOCKET NO. 16189
PETITION OF MFS COMMUNICATIONS
COMPANY, INC. FOR ARBITRATION OF
PRICING OF UNBUNDLED LOOPS

DOCKET NO. 16196
PETITION OF TELEPORT
COMMUNICATIONS GROUP, INC. FOR
ARBITRATION TO ESTABLISH AN
INTERCONNECTION AGREEMENT

DOCKET NO. 16226
PETITION OF AT&T COMMUNICATIONS
OF THE SOUTHWEST, INC. FOR
COMPULSORY ARBITRATION TO
ESTABLISH AN INTERCONNECTION
AGREEMENT BETWEEN AT&T AND
SOUTHWESTERN BELL TELEPHONE
COMPANY

DOCKET NO. 16285
PETITION OF MCI
TELECOMMUNICATIONS
CORPORATION AND ITS AFFILIATE
MCIMETRO ACCESS TRANSMISSION
SERVICES, INC. FOR ARBITRATION AND
REQUEST FOR MEDIATION UNDER THE
FEDERAL TELECOMMUNICATIONS ACT
OF 1996

DOCKET NO. 16290
PETITION OF AMERICAN
COMMUNICATIONS SERVICES, INC.
AND ITS LOCAL EXCHANGE
OPERATING SUBSIDIARIES FOR
ARBITRATION WITH SOUTHWESTERN
BELL TELEPHONE COMPANY
PURSUANT TO THE
TELECOMMUNICATION ACT OF 1996

ARBITRATION AWARD

III. DECISIONS ON ISSUES PRESENTED FOR ARBITRATION

The following decisions represent the Arbitrators' resolution of the issues presented for arbitration by SWBT, ACSI, AT&T, MCI, MFS, and TCG. The Arbitrators find that the following decisions, and the conditions imposed on the parties by these decisions, meet the requirements of FTA96 §251, and any applicable regulations prescribed by the Federal Communications Commission (FCC) pursuant to FTA96 §251. The following decisions establish rates for interconnection, services, and network elements according to the standards set forth in FTA96 §252(d). A schedule for implementation of the terms and conditions of this Award by the parties is described in the following decisions, and set forth in full in Section IV of this Award. *FTA96 §252(c)*.

At the end of each decision, the Arbitrators have included a reference to (1) the section of FTA96 on which the decision is based; and (2) the identity of the Petitioner(s) seeking an arbitrated resolution of the issue.

A. UNBUNDLED ELEMENTS

1. SWBT must provide access to the following unbundled network elements without restriction. LSPs may not be required to own or control any of their own local exchange facilities before they can purchase or use unbundled elements to provide a telecommunications service. (1) local loop; (2) network interface devices; (3) local switching; (4) tandem switching; (5) interoffice transport; (6) signaling and call-related databases; (7) operations support systems; (8) operator services and directory assistance; and (9) cross-connect from SWBT main distribution frame (MDF) to an LSP's collocation space. SWBT must offer unbundled local loops with and without automated testing and monitoring services. If an LSP uses its own testing and monitoring services, SWBT still must treat the test reports as its own for purposes of procedures and time intervals for clearing trouble reports. *FTA96 §251(c)(3)*. (*ACSI, AT&T, MCI, MFS*)
2. SWBT is not required to provide space on its Network Interface Devices (NIDs) to LSPs. *FTA96 §251(c)(3)*. (*AT&T, MCI*)
3. The unbundled local loops provided by SWBT are not required to be capable of delivering optical levels of signaling, including Synchronous Optical Network (SONET) private line service. SWBT must offer SONET private line service for resale at a wholesale discount. *FTA96 §251(c)(3)*. (*MCI*)
4. SWBT must provide dark fiber in the feeder segment of the loop as an unbundled network element under the following conditions: SWBT must offer its dark fiber to LSPs,

Arbitration Award

Consolidated Docket Nos. 16189, 16196,

16226, 16285, and 16290

November 7, 1996

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but may offer it pursuant to agreements that would permit revocation of an LSP's right to use the dark fiber upon twelve (12) months' notice by SWBT. To exercise its right of revocation, SWBT must demonstrate that the subject dark fiber is needed to meet SWBT's bandwidth requirements or the bandwidth requirements of another LSP. An LSP may not, in a twenty-four (24) month period, lease more than 25% of SWBT's excess dark fiber capacity in a particular feeder segment. If SWBT can demonstrate within a twelve (12) month period after the date of a dark fiber lease that the LSP is using the leased dark fiber capacity at a level of transmission less than OC-12 (622.08 million bits per second), SWBT may revoke the lease agreement with an LSP and provide the LSP a reasonable and sufficient alternative means of transporting the traffic. The Arbitrators find this requirement is necessary to ensure efficient use of dark fiber spectrum by various LSPs and SWBT. *FTA96 §251(c)(3). (AT&T, MCI)*

5. SWBT is not required to allow Signaling System 7 (SS7) advanced intelligent access from MCI's Service Control Point (SCP). When industry standards are established concerning connectivity of ILEC switches with LSP SCPs, parties may petition the Commission to require SWBT to provide such connectivity. This issue will be a subject of the review of interconnection issues to be conducted by the Commission on June 13, 1997. *FTA96 §251(c)(3). (MCI)*

6. SWBT must provide dark fiber in the dedicated interoffice transport segment of the network as an unbundled network element under the following conditions: SWBT must offer its dark fiber to LSPs who have collocation space in a SWBT tandem or end office, but may offer it pursuant to agreements that would permit revocation of an LSP's right to use the dark fiber upon twelve (12) months' notice by SWBT. To exercise its right of revocation, SWBT must demonstrate that the subject dark fiber is needed to meet SWBT's bandwidth requirements or the bandwidth requirements of another LSP. An LSP may not, in a twenty-four (24) month period, lease more than 25% of SWBT's excess dark fiber capacity in a particular dedicated interoffice transport segment. If SWBT can demonstrate within a twelve (12) month period after the date of a dark fiber lease that the LSP is using the leased dark fiber capacity at a level of transmission less than OC-12 (622.08 million bits per second), SWBT may revoke the lease agreement with the LSP and provide the LSP sufficient alternative means of transporting the traffic. The Arbitrators find this requirement is necessary to ensure efficient use of dark fiber spectrum by various LSPs and SWBT. *FTA96 §251(c)(3). (AT&T, MCI)*

7. SWBT must provide access to Digital Cross Connect Systems (DCS) functionality as an unbundled network element. SWBT is not required to install the unbundled DCS in an LSP's physical collocation space, but must allow virtual collocation of DCS as an unbundled network element. As an unbundled network